IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 2542 of 2006

Shridhar C. Shetty,]
of Bombay, Indian inhabitant,]
Sole Proprietor of]
M/s. Jay-Pali Builders, having his]
office at 1-Gayatri Building,]
Jay-Raj Nagar, Borivali (West),]
Bombay 400 091] ...Petitioner

VERSUS

1. The Additional Collector &]
Competent Authority,]
Housing and Special Assistance]
Department,]
Government of Maharashtra,]
New Administrative Building,]
5th Floor, Bandra (East),]
Bombay 400 050]

2. Iqbal Valli Hafizi,]
of Bombay, Indian Inhabitant,]
the Partner of National Builders,]
having his office address]
at Hafizi House, 1st Floor,]
Jogeshwari (West),]
Bombay 400 102]

3. Siddique Valli Hafizi,]
of Bombay, Indian Inhabitant,]
Partner of M/s.National Builders,]
having his office address]
at Hafizi House, 1st Floor,]
Jogeshwari (West),]
Bombay 400 102]

4. Umesh H. Gandhi,]
of Bombay Indian Inhabitant,]
Partner of]
M/s. National Builders, having]
his office at Goyal Shopping]
Centre, Borivali (West),]
Bombay]

5. The State of Maharashtra]
through the Government Pleader]
(O.S.), High Court, Bombay] ...Respondents.

Mr. P.K. Samdani with Mr. Firoz Pooniwala i/by Mr. Y.R. Shah for the Petitioner

Mr. K.R. Belosey, Officiating Government Pleader, for Respondent Nos. 1 and 5

Mr. A.H. Khatri for Respondent No. 4.

CORAM: SWATANTER KUMAR,C.J., &
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON: APRIL 23, 2007
JUDGMENT PRONOUNCED ON: JUNE 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. Vide order dated 15th October, 2005, the Additional Collector and Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 [hereinafter, for short, referred to as "the Act"], Bombay, requested the Collector, Bombay Suburban District, to recover a sum of Rs.51,97,196/- plus interest, penalty and recovery expenses as land revenue from the persons in respect of 7 tenements admeasuring 269.76 square metres each and also provided the complete details thereof. In the said order, it was stated that the developer had constructed the building on C.T.S. Nos. 261 (Part) and 245 (Part), Mauje, Taluka Borivali. He was to hand over the possession of 7 tenements to the Government nominees, but without adhering to the same, the developer sold the flats in open market. Complaint bearing No. 111 of 2005 was filed with the Senior Inspector of Police of the concerned police station on 23rd June, 2005. Vide order dated 30th April, 2005, the developer and owner, both, were asked to deposit the said amount; but they failed to do so, resulting in issuance of the above order dated 15th October, 2005.

2. Aggrieved therefrom, the petitioner filed an appeal before the Additional Commissioner, Konkan Division, on 28th October, 2005. In that appeal, an ad-interim relief was granted on 12th January, 2006, but after the matter was heard at length, the appeal was dismissed by the Appellate Authority vide its order dated 12th July, 2006. After receiving the copy of the said order, the petitioner has filed the present Writ Petition, challenging the said order on the grounds that the Appellate Authority failed to appreciate the effect of the No Objection Certificate granted by the Secretary, Housing Department, on 8th June, 1993; and also that respondent Nos. 1 and 2 were directly interacting with each other in relation to all the matters with regard to the property in question since 1992; and thus, in any case, no liability should be passed on the petitioner.

3. The petitioner is the sole proprietor of M/s. Jaipali Builders, which was originally a partnership concern, and respondent Nos. 2 to 4 were the partners of the firm titled “National Builders”. On 2nd April, 1984, they had executed an Agreement for purchase of the property in question from the original owners, Bhaskar Bhoir and Waman Bhoir. The original owners

executed a Power of Attorney in favour of the petitioner on 15th January, 1985 for development of the said property. The Scheme under the Act was passed on 2nd March, 1988 in respect of development of 40000 square feet. Disputes arose between the partners in the partnership concern, and development was stayed. The petitioner, on 28th August, 1988, had signed the Agreement for developing the property in favour of National Builders. However, National Builders took over the liability to continue the U.L.C. Scheme and comply with the terms and conditions under the Scheme in respect of the said property. National Builders executed 84 Flat Purchase Agreements with various flat purchasers through respondent No. 2. There was litigation between the petitioner and respondent Nos. 2 and 3 in the present writ petition for allotment of flats to them. In October, 1991, respondent No. 2 had filed an affidavit in the High Court in Appeal from Order No. 925 of 1991, stating that respondent No. 2 had taken over the entire project. Respondent No. 2 requested the official respondent for issuance of corrigendum for reduction of number of flats to Government-nominees, which was not acceded to; and the said respondent had given only 7 flats to the

Government-nominees. The official respondent, thereafter, issued letter for compliance of the allotment of flats to Government-nominees in relation to the remaining 7 flats and the letter was also addressed to National Builders; but of no consequence resulting in issuance of the impugned order by the authorities, as well as the order rejecting the appeal preferred by the petitioner.

In the reply filed on behalf of the Additional Collector and Competent Authority (ULC), Greater Mumbai, it is averred that the petitioner was to develop the C.T.S. Plots, but he developed only one plot i.e. C.T.S. No. 261 (Part). The petitioner, in whose names, the Municipal Corporation of Greater Mumbai had approved the building plans on 19th October, 1988, was required to give 20% of the built-up area in the form of 14 tenements. It is also stated across the Bar that the permission to construct was also issued in the name of the petitioner on 28th February, 1989. The petitioner, on 23rd October, 1989, communicated to respondent No. 1 that he had started construction in the land; and requested for grant of extension for completion of the Housing Scheme. The

petitioner, thus, was personally liable for surrendering 7 tenements.

4. It is specifically averred by the official respondent that in terms of Section 8(4) of the Act, the owner or the land-holder of the property was Waman G. Bhoir as on 31st July, 1980; and the land was declared as “Surplus Vacant Land” in accordance with the provisions of the Act. Thereafter, the petitioner submitted the Scheme under Section 20 of the Act in the year 1987, and the same was exempted vide order dated 2nd March, 1988 on the terms and conditions stated in the Order of Exemption. A corrigendum was also issued on behalf of the petitioner mainly in regard to the correction of the area. The petitioner failed to comply with the terms and conditions imposed upon him despite various reminders dated 4th July, 2001, 9th January, 2002, 14th February, 2002 and 28th July, 2003, resulting in passing of the orders indicated above.

5. Certain aspects in this case can hardly be a matter of dispute. The Scheme approved by the authorities is the composite, approved Scheme, which carries benefits and obligations of the

petitioner. This was given in the name of the petitioner, and none else. The liability and particularly, surrender of 20% of the constructed area, leading to 15 tenements, is necessarily a condition relatable, and a kind of charge upon the land in question. Non-fulfilment of this condition would be totally violative of the basic fundamental of the Scheme. The provisions of the Act and the Rules framed thereunder are clear in this regard. Item No. 10 of the Schedule giving details regarding the applicant and the vacant land, for which exemption is sought under Section 20, clearly stated that the owner is to give 15 tenements below 40 square metres plinth area. This Schedule was annexed to the order dated 2nd March, 1988. The Agreement, which was executed between the petitioner as sole proprietor of Jaipali Builders and M/s. National Builders, and the Agreement dated 2nd April, 1984 between the owner and the petitioner, both, specifically provided for discharge of the obligations and Clause 5 of the Agreement dated 29th August, 1988 reads as under:-

> "The parties hereto further declare that the Developer is aware as mentioned hereinabove that the Developer will have to give certain premises to Government at the rate

> of Rs.135/- in respect of the NoC that has already been received. If the Government requires any further premises in respect of the NoC for the remaining area the developer shall construct and allot the said premises to the Government at whatever rate the Government may fix and that the Owners shall not be responsible and/or liable in any manner for the same. ”

6. In the light of the above specific contract between the parties, it is clear, beyond ambiguity, that all the private respondents were aware of their specific obligations in relation to the surrender of 15 tenements. There is no dispute to the fact before us that none of them have complied with that condition and only 7 tenements have been surrendered, while the remaining have not been. Whatever be the nature of documents executed between the private parties, they cannot alter the conditions of the ULC Scheme and the exemption granted to them in terms of Section 20 of the Act. Every person would get his interest, subject to these conditions which are paramount and, in fact, controls the property and its development in all respects. It may also be noted that for reasons best known to the petitioner, he has not impleaded even the original owner of the property as a party to this petition. The dispute, in fact, is a private dispute between the petitioner and respondent Nos. 2 to 4. As already

noticed by us, whatever be the language of the Agreement executed between themselves, they cannot absolve themselves of a legal, compulsive liability of surrendering the requisite constructed area. Proceedings were taken against the petitioner in furtherance to the complaint in respect of non-transfer of tenements reserved for Government under the Housing Scheme, as is apparent from the order dated 19th July, 2005 passed by Senior Inspector of Police. The petitioner cannot claim any advantage as a result of clear attempt on the part of the private respondents and the present petitioner to avoid their unquestionable liability for surrender of the requisite tenements. The orders of the First Authority and the Appellate Authority do not suffer from any error of fact, and call for no interference even on any question of law, though hardly any contentions have been raised before us in the present petition.

7. We find no merit in the petition. The same is dismissed.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.